



STATE OF NEW JERSEY

In the Matter of Muhammed Ojibara,
Fire Fighter (M1540T), Irvington

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-2920

List Removal Appeal

ISSUED: JULY 20, 2018

(JET)

Muhammed Ojibara appeals the removal of his name from the Fire Fighter (M1540T), Irvington, eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Fire Fighter (M1540T), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on May 6, 2016 (OL160577 certification). In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory criminal record. Specifically, the appointing authority indicated that on September 14, 2016, the appellant was arrested in Irvington at the time he appeared for his interview for the subject position as a result of three active warrants. The appointing authority indicated that the first warrant was issued on June 22, 2007 for Failure or Refusal to Pay Prescribed Fare in violation of *N.J.A.C. 16:87-2.2(A)1*; the second warrant was issued on November 6, 2008 for Evading or Attempting to Evade Payment in violation of *N.J.A.C. 16:87-2.2(A)1*; and the third warrant was issued on April 27, 2009 for Failure or Refusal to Pay Prescribed Fare in violation of *N.J.A.C. 16:87-2.2(A)1*.

On appeal, the appellant asserts that, although he was arrested on September 14, 2016 when he appeared for an interview at the appointing authority, at the time of the arrest he did not receive any summonses from Jersey City and Newark and he was not using public transportation at the time of the alleged incidents. The appellant contends that he informed the appointing authority's detective that the charges against him in Jersey City were dismissed and the

charges in Newark would be dismissed in the near future. The appellant adds that his background report only reflects that he was arrested in Irvington. The appellant asserts that, since the appointing authority's December 2017 background check did not list any arrests or convictions, his name should now be restored to the list.

In support, the appellant provides documentation from the City of Newark dated September 28, 2016 indicating that the charge of Failure or Refusal to Pay Prescribed Fare and the charge of Evading or Attempting to Evade Payment were dismissed effective September 26, 2016. The appellant also submits a letter dated December 1, 2017 from the Division of State Police, indicating that a search of the Master Fingerprint File maintained by the State Police did not reveal any criminal convictions or pending charges.

Despite being provided with the opportunity, the appointing authority did not provide a response.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)(4), provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. *See Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Civil Service Commission (Commission) must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)(4) to determine whether the appellant's criminal history adversely relate to the position of Fire Fighter. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment list to consider whether the candidate's arrest adversely

related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. See *Tharpe v. City of Newark Police Department*, *supra*.

Additionally, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for an appointment.

In this matter, it clear that the appellant's arrest in Irvington clearly adversely relates to the employment sought. The appellant argues that he should not have been arrested as a result of the outstanding warrants against him. However, he has not provided any substantive evidence in support of that claim, and he has not provided any information to show that he was not arrested. The record reflects that the appellant was arrested on September 14, 2016 as a result of three outstanding warrants against him. With respect to the appellant's arguments pertaining to the warrants, he provides some documentation to show that two of the warrants were dismissed in Newark effective September 26, 2016. However, such information does not substantiate his claims, since the September 14, 2016 date of his arrest was prior to the date the warrants were dismissed. As such, the record does not reflect that the warrants were dismissed at the time of his arrest. Although the appellant argues that he was not convicted of any crimes, such information does not overcome that he was arrested as a result of the outstanding warrants based on the aforementioned charges. With respect to the appellant's arguments that he was not involved in the incidents that led to the warrants and his subsequent arrest, he has not provided any substantive evidence in support of his claims. Although the arrest appears to have been an isolated incident, the appellant has not provided a sufficient explanation regarding his involvement in the incidents. Further, it cannot be ignored that he was arrested one year and one month prior to when he had applied for the subject examination and only four months after his name was certified on the subject list. Moreover, it is noted that the removal of eligibles from Fire Fighter lists on the basis of adverse criminal records have been upheld. See *In the Matter of James Alessio* (MSB, decided March 9, 1999). Although the charges against him do not statutorily constitute criminal charges, the appellant's arrest in Irvington in September 2016 may still be considered. In *Karins v. City of Atlantic City*, 152 *N.J.* 532, 552 (1998) the Supreme Court stated:

Firefighters are not only entrusted with the duty to fight fire; they must also be able to work with the general public and other municipal employees, especially police officers, because the police department responds to every emergency fire call. Any conduct jeopardizing an excellent working relationship

places at risk the citizens of the municipality as well as the men and women of those departments who place their lives on the line on a daily basis. An almost symbiotic relationship exists between the fire and police departments at a fire.

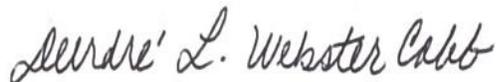
In this matter, the appellant's adverse background information pertaining to the warrants and charges against him, as well as his arrest that occurred in September 2016, are relevant to the position sought, as such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Fire Fighter. As noted above, the public expects Fire Fighters to present a personal background that exhibits respect for the law and the rules. Accordingly, the appointing authority has presented sufficient cause to remove the appellant's name from the Fire Fighter (M1540T), Irvington eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18th DAY OF JULY, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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